UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

SAFETY BUS COMPANY Employer and	Case 4–RD–1856
ANTHONY MAUCERI, an Individual Petitioner	
TEAMSTERS UNION LOCAL NO. 331, a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO[1] Union Involved	

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

[1] The name of the Union Involved appears as amended at the hearing.

3. The labor organization involved claims to represent certain employees of the Employer.

4. The Employer provides school bus transportation services from its facilities in Absecon, New Jersey. The Union Involved contends that the petition is untimely as it was not filed during the open period prior to the termination of the 1996 to 1999 collective bargaining agreement between the Employer and the Union Involved. Alternatively, the Union Involved argues that the petition is barred by virtue of a successor collective bargaining agreement ratified by members of the Union Involved on September 7, 1999, the date the instant petition was filed.

On September 25, 1996, the Employer and the Union Involved reached a "tentative settlement" on the terms of a collective bargaining agreement. The settlement consisted of four pages of bargaining notes that provided, inter alia, for annual wage increases for unit employees effective September 1, 1996, 1997 and 1998. The "tentative settlement" did not include a specific termination date for the agreement although the record testimony shows that the parties agreed that the contract was to be for three years. The Union's membership ratified the tentative agreement. Joseph Yeoman, the Union Involved's President & CEO, and Thomas Dugan, the Employer's President, separately signed the agreement on November 7, 1996. The duration clause of the agreement stated,

> The provisions of this Agreement shall commence and become effective on the date of execution set forth below and continue until such date in 1999, and shall continue in effect after such 1999 date from year to year unless terminated by either party . . ..
>
> IN WITNESS WHEREOF, the parties hereto have set their hand and seals this 7th day of November, 1996.

According to Yeoman, he did not read the duration provision of the agreement before he signed it. Yeoman testified that the business agent responsible for the unit reviewed the entire contract, that the business agent represented that the "dates and conditions and wages" were correct and that he (Yeoman) saw and signed only the signature page, which was on a page separate from the duration provision of the agreement. Yeoman also testified that he intended and understood that the date on the signature page was nothing more than the date the parties signed the agreement and that the effective date of the contract would be September 1, 1996 through August 31, 1999.

On June 28, 1999, Yeoman sent a letter to Dugan to reopen the contract which, according to the letter, "expires August 31, 1999." Dugan responded that the agreement did not expire until November 7. In response to the Union's threat to strike the Employer on September 1, the beginning of a new school year, Dugan agreed to meet with the Union Involved to negotiate a successor to the 1996 agreement. The Employer and the Union Involved reached an agreement on September 1, 1999. The agreement was signed by the Employer and the Union Involved but it contained an express provision which stated that the agreement was subject to ratification by the Union Involved. On September 7, 1999, the day the instant petition was filed, the employees voted against ratification. Later that day, after a second meeting on ratification was called, the employees ratified the agreement subject to some changes, which Dugan agreed to that evening.

The successor agreement provides for wage increases on September 1 of each year and specifically provides that the agreement was to be effective from September 1, 1999 through August 31, 2002.

The purpose of the Board's contract bar rules is to "achiev[e] a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." *Appalachian Shale Products*, 121 NLRB 1160, 1161 (1958); see also *Deluxe Metal Furniture Co.*, 121 NLRB 995, 997 (1958). Thus, a contract for a reasonable term not in excess of three years will bar a representation petition for the duration of the agreement subject to an "open period" from 60 through 90 days before the termination date of the agreement during which a representation petition may be filed. *Shen-Valley Meat Packers*, 261 NLRB 958, 959–960 (1982); *General Cable,* 139 NLRB 1123 (1962); *Leonard Wholesale Meats*, 136 NLRB 1000 (1962).

The 1996 agreement provides that is effective for three years, commencing on November 7, 1996, and continued "until" November 7, 1999, the third anniversary of the execution date. See *Dobbs International Services*, 323 NLRB 1159, 1160 (1997). Thus, the petition was filed during the open period in the 1996 to 1999 agreement. The Union Involved's contention that the effective date of the agreement was September 1, 1996 through August 31, 1999, is contrary to the plain language of the agreement and is irrelevant for contract-bar purposes. To balance the competing interests of stability and employee free choice, "the Board looks to the contract's fixed term or duration, because it is this term on the face of the contract to which employees and outside unions look to predict the appropriate time for the filing of a representation petition." *Union Fish Co.*, 156 NLRB 187, 191(1965) (internal citation omitted); *Shen-Valley Meat Packers*, supra**,** 261 NLRB at 958–959 fn. 1. Thus, an agreement that requires parol or extrinsic evidence to determine its effective dates will not bar a representation petition regardless of when the petition is filed. *Shen-Valley Meat Packers*, supra, 261 NLRB at 958–959 fn. 1; *Union Fish Co.,* supra, 156 NLRB at 191–192; *NLRB v. Arthur Sarnow Candy Co.*, 40 F.3d 552, 558 (2d Cir. 1994), enfg. 312 NLRB No. 126 (1993). Accordingly, I find that the Petitioner timely filed the petition during the open period of the 1996 to 1999 agreement.

The Employer and the Union Involved reached agreement and signed a successor contract on September 1, 1999. The contract was specifically subject to ratification which did not take place until September 7, 1999, the day the petition was filed. This contract does not, however, bar the petition. To preserve the right of employees and rival unions to file representation petitions, the Board regards contracts entered into during the term of a preceding contract as a "premature extension" that will not a bar a representation petition. *Direct Press Litho*, 328 NLRB No. 107, slip op. at 2 (1999); *MCP Foods*, 311 NLRB 1159 (1993); *Shen-Valley Meat Packers*, supra, 261 NLRB at 959.

Accordingly, I find that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full–time and regular part–time bus drivers employed by the Employer at its 235 Absecon Boulevard, Absecon, New Jersey facility, excluding guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,[2] subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

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LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman–Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within **7** days of the date of this Decision **3** copies of an election eligibility list, containing the ***full*** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list

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[2] Your attention is directed of Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **October 29, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **November 5, 1999**.

Dated October 22, 1999

at Philadelphia, PA

/s/ Dorothy L. Moore–Duncan
DOROTHY L. MOORE–DUNCAN
Regional Director, Region Four

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